

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Michael Fritz SAILER

Serial No.: 10/581,157

Filing Date: (Int'l) December 1, 2004

For: ECOLOGICALLY PROTECTED
MATERIAL

Confirmation No.: 1883

Group Art Unit: 1651

Examiner: Taeyoon Kim

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Madam:

This is in response to a Restriction Requirement herein, mailed 2 March 2009, time for response to which was set to expire 2 April 2009. A petition for an extension of time of one (1) month until 2 May 2009 is attached hereto, along with the required fee.

Applicant elects to prosecute the invention of Group II, claims 9-21, drawn to a composition comprising a base material with a coating of a water insoluble substance and a microorganism layer.

This election is made with traverse.

The requirement is based on the assertion that McDaniel (US2004/0109853) teaches a water insoluble coating and a coating comprising microorganisms. This technical feature shared by the

groups of invention is said to be disclosed by McDaniel. Applicant is unable to find any such disclosure in McDaniel. No portion of McDaniel that makes such a disclosure has been pointed out by the Office, and applicant is unable to find any place in McDaniel where the special technical feature shared by the groups of the invention is disclosed.

According to paragraph 21 of McDaniel, surface treatments such as coatings are disclosed which incorporate biological molecules into them. There does not seem to be a disclosure of any layers of a water insoluble material covered with a microorganism. Biomolecules are defined as one or more compounds derived from living organisms such as enzymes, and no description is found of using living microorganisms *per se*. Further, applicant is unable to find any description of a coating of a water-insoluble substance at the surface and a covering microorganism layer or, for that matter, a covering layer of a biomolecule.

It appears that where microorganism based particulate materials are mentioned, what is referred to is non-living, perhaps disrupted microorganisms, not living organisms as contemplated by the present invention. If adding the word “living” before “microorganism” in the claims would be helpful, applicant would consider this.

In any event, applicant considers that should the claims of Group II be allowed, Group I would certainly be rejoined. It is unclear why Group III constitutes a separate group in any case.

Reconsideration of the restriction requirement in light of the foregoing discussion is respectfully requested and examination of all claims is requested as well.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of

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such petitions and/or other fees due in connection with the filing of this document to **Deposit**

Account No. 03-1952 referencing docket No. 313632002000.

Respectfully submitted,

Dated: April 24, 2009

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